Supreme Court, U.S.
FILED
DEC 19 1994
OFFICE OF THE CLERK

No. 94-894

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

GEORGIA MAE ROBERTS,

Petitioner,

v.

THE TOWN OF CANTON,
A MUNICIPAL CORPORATION; and CARL LANE,
CHIEF OF POLICE OF THE TOWN OF CANTON,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRIEF IN OPPOSITION

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December 19, 1994

Washington, D.C. • THIEL PRESS • (202) 328-3286

30 pp

RULE 14 AND 24.1(a) QUESTIONS PRESENTED

I.

WHETHER THIS COURT SHOULD GRANT CERTIORARI WHEN PETITIONER HAS NOT INVOKED ANY CONSIDERATION LISTED IN RULE 10.1?

II.

WHETHER SUMMARY JUDGMENT WAS APPROPRIATE FOR PETITIONER'S CIVIL RIGHTS CLAIM WHEN SHE FAILED TO ALLEGE OR IDENTIFY AN UNCONSTITUTIONAL PATTERN, PRACTICE OR POLICY OF CANTON AND FAILED TO DEMONSTRATE AN UNCONSTITUTIONAL ACT BY A POLICY MAKER IN THE SCOPE OF EMPLOYMENT?

III.

WHETHER SUMMARY JUDGMENT WAS APPROPRIATE FOR PETITIONER'S DEPRIVATION OF DUE PROCESS CLAIM WHEN THE ALLEGEDLY WRONGFUL ACT WAS AN INTENTIONAL TAKING OF MONEY AND ADEQUATE STATE LAW BASED TORT REMEDIES EXIST?

IV.

WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION BY DISMISSING WITHOUT PREJUDICE PETITIONER'S PENDANT STATE LAW BASED TORT CLAIM AFTER IT ENTERED JUDGMENT FOR RESPONDENTS ON THE FEDERAL CLAIMS WHICH GAVE IT ORIGINAL JURISDICTION?

RULE 29.1 STATEMENT

Respondent, TOWN OF CANTON, is a municipal corporation organized under the laws of Oklahoma as a Statutory Town Board of Trustees government and has no parent company and no corporate subsidiaries.

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THE TOWN OF CANTON,
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CHIEF OF POLICE OF THE TOWN OF CANTON,

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ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Respondents accept Petitioner's Statement of the Case, with the following additions and corrections, pursuant to Rule 24.2.

PROCEDURE

Petitioner's original Complaint alleged that she was deprived of twenty-two dollars without due process of law when Respondent Lane, sued only in his official capacity, purportedly "misappropriated" a payment of court costs for a traffic ticket; and, that Respondent Canton was liable for the "intentional constitutional torts" of its employee, Lane. (Resp.App. 1-3)

On June 22, 1993, Respondents Canton and Lane moved to dismiss, or in the alternative for summary judgment, and submitted a brief in support. Respondent filed a response on August 11, 1993.

On August 13, 1993, the District Court entered an order directing Petitioner to submit any pertinent documentation since it intended to consider Respondents' pending motion as one for summary judgment. Although Petitioner submitted a supplemental response to Respondents' motion, no evidentiary materials were presented. Respondents filed a Reply.

On January 28, 1994, the District Court entered its Judgment and Memorandum Opinion and order. (Pet. App. 23-24). Petitioner's pendant state law based tort claim was dismissed without prejudice when the Court, in its discretion, declined to exercise supplemental jurisdiction pursuant to 28 U.S.C. §1367(C)(3). (Pet. App. 24, 31-32).

Petitioner perfected an appeal to the United States Court of Appeals for the Tenth Circuit and it entered its Order and Judgment on August 17, 1994. (Pet.App. 18-22).

FACTS

Respondent Town of Canton is a municipality in the Western District of Oklahoma organized with a Statutory Town Board of Trustees government. Respondent Lane is the Chief of Police for Canton.

Petitioner's Complaint alleged that she received a traffic citation for speeding on April 10, 1992. She claimed to have paid the ticket on May 2, 1992, and agreed to pay twenty-two dollars in related court costs by June 3, 1992. She claimed to have received an extension until July 10, 1992, to pay the costs.

Petitioner maintained in her pleadings that she mailed a payment of court costs on June 28, 1992, but was later informed by Canton's Clerk that the payment had not been received. Plaintiff alleged that she subsequently personally delivered payment of the court costs on July 24, 1992.

Petitioner alleged that Chief Lane picks up Police Department mail from Canton's post office and that a postal worker placed her original payment of the costs in the Police Department mailbox. Petitioner alleged that Chief Lane "misappropriated" the funds and that this "intentional constitutional" tort was performed under color of state law.

SUMMARY OF ARGUMENT

Petitioner's request for a Writ of Certiorari should be denied because she has not identified any special or important reason listed in Rule 10.1(a) which might be applicable to this case. The Order and Judgment of the United States Court of Appeals for the Tenth Circuit are not in conflict with any other court of appeals on the same matter. Neither did the Tenth Circuit decide a

federal question in a way in conflict with any state court of last resort. Finally, neither the Tenth Circuit's judgment nor that of the District Court which it affirmed departed from any acceptable and usual course of proceedings such that an exercise of this Court's supervisory powers is appropriate. Absent the applicability of any of these concerns, the requested writ should be denied.

Substantively, the District Court's summary judgment and dismissal entered in favor of Respondents were properly affirmed for three reasons. First, Petitioner did not allege or identify any state action with respect to her claim that she was deprived of property without due process of law. Thus, the claim failed. This is so because she did not allege or identify any unconstitutional pattern, practice or policy by Canton which deprived her of protected rights. Neither did she identify any single wrongful act by a policy maker acting within the scope of his or her duties sufficient to create liability from a single incident. Absent these requisite elements, Petitioner's claim failed as a matter of law.

Second, Petitioner could not show a deprivation of due process of law even if an unconstitutional policy or act by a policy maker existed. This is because Petitioner has an adequate post-deprivation state law based tort remedy available in the form of Oklahoma's Governmental Tort Claims Act, 51 O.S. §151, et seq. Because Petitioner alleged an intentional, wrongful taking of money, it would have been impossible for Respondent Canton to have provided pre-deprivation due process. Petitioner did not respond to this argument before the District Court and, hence, has waived any claim of error. (Pet.App. 20, 30). Further, this Court has held that post-deprivation state tort remedies are adequate due

process of law under analogous circumstances. Therefore, Petitioner's federal claim also failed as a matter of law since she cannot show a deprivation of due process.

Finally, the Tenth Circuit correctly recognized that the District Court did not abuse its discretion by dismissing Petitioner's state law tort claim without prejudice following the entry of judgment on the deprivation of due process claim. Once the District Court had disposed of the federal claim which gave it original jurisdiction, it had discretionary authority to dismiss any pendant claim pursuant to 28 U.S.C. §1367(C)(3).

Petitioner's claim that she could not receive a fair hearing in state court as a Native American who has "difficulties" with the local judge (Petitioner's Brief at 12) was raised for the first time on appeal to the Tenth Circuit. Technically, it addresses Respondents' argument that Oklahoma's Governmental Tort Claims Act provides adequate due process of law, an argument which Petitioner confessed before the District Court. (Pet.App. 20, 30). As such, it should not provide the basis for the requested Writ.

For all these reasons, Petitioner's request for a Writ of Certiorari should be denied.

ARGUMENT AND AUTHORITY

I.

PETITIONER'S REQUESTED WRIT SHOULD BE DENIED SINCE SHE HAS FAILED TO DEMONSTRATE HOW ANY RULE 10.1 CONSIDERATION IS APPLICABLE IN THE INSTANT CASE.

Rule 10.1 of this Court's rules clearly states that a review on Writ of Certiorari is a matter of judicial discretion. As the Rule states, a Writ will only be granted when there are "special and important reasons." Although the Rule by its own terms does not contain an exhaustive or comprehensive list of the reasons which compel this Court to exercise its discretion, it does give guidance. Petitioner has not explained how any of these guiding principles are applicable in the instant case.

Specifically, Rule 10.1(a) identifies several reasons for granting the requested writ to review a decision of a United States Court of Appeals. These would be the guiding principles in the instant case. However, none of these principles apply. There is no showing how the decision of the United States Court of Appeals for the Tenth Circuit is in conflict with the decision of any other United States Court of Appeals on the same matter. In fact, it is consistent with prior decisions of this Court.

Neither is there any argument from Petitioner that the Tenth Circuit decided a federal question in a way which is in conflict with a state court of last resort. This is so because there are simply no decisions in conflict with the Tenth Circuit on the matters addressed in the instant matter.

Finally, there is no argument from Petitioner, nor can there be, that the decision of the Tenth Circuit somehow "departed from the accepted and usual course of judicial

procedings." Neither can there be any showing that the Tenth Circuit has "sanctioned such a departure by a lower court" since the decision of the United States District Court for the Western District of Oklahoma was proper in all regards. Accordingly, there is no call for this Court to exercise its supervisory powers.

In short, there is nothing which should compel this Court to exercise its judicial discretion and issue the requested Writ of Certiorari. Respondents urge the requested Writ be denied.

II.

SUMMARY JUDGEMENT WAS APPROPRIATE FOR PETITIONER'S CIVIL RIGHTS CLAIM BECAUSE SHE FAILED TO ALLEGE OR IDENTIFY AN UNCONSTITUTIONAL PATTERN OR PRACTICE BY CANTON OR AN OFFICIAL POLICY MAKER.

Petitioner claimed she was deprived of property without due process of law, in violation of the Fourteenth Amendment to the United States Constitution. Her action was brought, in part, pursuant to 42 U.S.C. §1983. It is therefore crucial to note that she alleges only the single incident of purportedly wrongful activity as a basis for liability against both Canton and Lane. Lane was sued only in his official capacity.

A single act of wrongful activity is insufficient to impose liability against a municipality for a civil rights violation. Municipalities are not liable on an agency basis for the individual wrongs of their employees. *Monell v. New York City Department of Social Services*, 436 U.S. 658, 690, 98 S.Ct. 2018, 2035, 56 L.Ed.2d 611 (1978). Instead, a claimant must have been injured by a wrongful act undertaken pursuant to an existing unconstitutional municipal policy or custom. *City of Oklahoma*

City v. Tuttle, 471 U.S. 808, 105 S.Ct. 2427, 85 L.Ed.2d 791 (1985).

In the instant case, there was no allegation that Chief Lane was acting purusant to any policy or custom of Canton at the time he purportedly "misappropriated" Plaintiff's money. Absent such an allegation, there is no claim that Canton has an unconstitutional municipal policy or custom. Without such a claim, Canton cannot be liable under a civil rights theory for the single, allegedly wrongful incident of its employee.

One potential exception to the above-stated rule was recognized by this Court in *Pembauer v. City of Cincinnati*, 475 U.S. 469, 483, 106 S.Ct. 1292, 1300, 89 L.Ed.2d 452 (1986) and *City of St. Louis v. Praprotnik*, 485 U.S. 112, 108 S.Ct. 915, 924, 99 L.Ed.2d 107 (1988). This Court indicated that in certain limited circumstances a municipality may be liable for a single wrongful act of an official. However, this liability occurs only when the official is "the final policy making authority" so that his or her wrongful acts may be deemed the policy of the city. *Pembauer*, 475 U.S. at pg. 483. The limitation on this potential basis for liability is that the acts must be "acts of the municipality." The municipality must actually sanction or order them. *Pembauer*, 475 U.S. at pg. 480; *Praprotnik*, 108 S.Ct. at pg. 924.

Petitioner argues that Lane, as Chief of Police, had policymaking authority. (Pet.Brief at p. 8) Petitioner apparently claims that this makes Respondent Lane a policy maker so that his actions may be the predicate to impose liability on the Town of Canton. This argument fails for two reasons. First, there was no evidence and no allegation of any unconstitutional policy made by Lane. Even if Lane had the status of policy maker with respect to collecting fines, which was never alleged

or established by inference with any evidence, Petitioner does not identify or allege any unconstitutional policy sufficient to create a basis for liability. As this Court noted in *City of St. Louis v. Praprotnik*, 485, U.S. 126, 108 S.Ct. 915, 926, 99 L.Ed.2d 107 (1988):

> The city cannot be liable under Section 1983 unless respondent proved the existence of an unconstitutional municipal policy. Respondent does not contend that anyone in city government ever promulgated, or even articulated, such a policy. *Praprotnik*, 108 S.Ct. at 926.

Even if an individual involved in the litigation can be deemed a "policy maker" whose actions are sufficient to impose liability on the city, the liability must be based on some unconstitutional policy. In the instant case, Petitioner never alleged or identified any "unconstitutional policy" of Canton's or Lane's and so her claim failed.

The second reason this argument should be rejected is that Chief Lane simply is not a "policy maker" whose actions might be deemed the "policy" of the Town of Canton. In *Praprotnik*, supra, this Court clarified its earlier decision in *Pembaur*, supra. Justice O'Conner, speaking for the Court, identified four necessary elements to establish when a decision on a single occasion may be enough to establish an unconstitutional municipal policy. *Praprotnik*, 108 S.Ct. at 924. Three of the four necessary elements of these "Guiding Principles" for establishing such a claim require that:

> (1) Only municipal officials with final policy making authority may subject the government to Section 1983 liability;
>
> (2) The issue of whether the official has final policy making authority is a question of *state law*; and,

> (3) The challenged action must have been taken pursuant to a policy adopted by the official or the officials responsible under state law for making policy in that area of the city's business. *Proprotnik*, Id., at pg. 294 (citing *Pembaur*, 106 S.Ct. at 1299-1300). (Emphasis in original).

In the instant case, Petitioner failed to allege or produce any evidence that Chief Lane had policy making authority regarding the collection of fines or handling of mail sufficient to show that his actions might bind the city with respect to any policy adopted in these areas. In fact, Chief Lane has *no authority* in these areas. The District Court had before it an excerpt from the Town of Canton's Code of Ordinances. Canton's Ordinances showed that Canton is organized as a statutory town board of trustees town. Under Oklahoma Law – the guiding principal according to this Court in *Pembaur* and *Praprotnik* – all policy making authority in a town such as Canton is left to the town board of trustees. Oklahoma's statutes for this form of government state:

> 11 O.S. § 12-106 Powers vested in board of trustees–designated powers
>
> *All powers* within of a statutory town board of trustees town, *including the determination of matters of policy shall be vested in the board of trustees.* (Emphasis added.)

Oklahoma law gives Canton's Board of Trustees *all* policy making authority. Canton's chief of police has no delegated policy making authority. Without such authority under Oklahoma law, Lane is incapable of establishing an "unconstitutional" policy for purposes of Petitioner's claims.

Moreover, Oklahoma's Government Tort Claims Act, 51 O.S. §151, et seq. (Pet.App. 34-104), states when a municipal employee is acting within the scope of employment. Section 152(9) states:

> "Scope of employment" means performance by an employee acting in good faith within the duties of his office. . . . (Pet.App. 45)

Therefore, for the Town of Canton to be liable for the alleged wrongs of Chief Lane, Lane must have acted "in good faith" in order to have been within the scope of his employment.

Petitioner alleged that Lane wrongfully "misappropriated" money. Respondents submit that such an allegation would take Lane outside the scope of his employment since it is impossible to "misappropriate" money in good faith. Because the allegation takes Lane outside the scope of his employment, Lane could not make policy for Canton in this instance even if he were a "policy maker."

This analysis was earlier employed by the United States Court of Appeals for the Tenth Circuit in *Houston v. Reich*, 932 F.2d 883 (10th Cir. 1991). Its decision in the instant matter was entirely consistent with its earlier precedent construing Oklahoma law.

In *Houston*, supra, the Tenth Circuit considered an appeal from the Eastern District of Oklahoma where the trial court had issued an Order directing a city and excise board to make tax levies to retire a judgment entered in favor of Plaintiff. The city appealed this ruling since it had been previously dismissed from the litigation after a finding that its police officers acted outside the scope of their employment. The officers, however, were found liable. *Houston*, Id., at pg. 889.

The Tenth Circuit ultimately held that the city was not liable for the judgment against the individual police officers since at trial the jury had found the officers responsible for punitive damages. The Tenth Circuit concluded that such a finding indicated the individual officers' actions had amounted to gross negligence and willful and wanton conduct amounting to a reckless disregard of Houston's rights.

> Once the jury found that Defendants Reich and McHam had acted willfully, wantonly and in reckless disregard of Houston's constitutional rights, the city was not liable under the Oklahoma Governmental Tort Claims Act and Reich and McHam forfeited their immunity from liability under the Act. *Houston*, Id. at pg. 890.

Although *Houston*, supra, addressed the issue of a city's liability for torts of its employees under Oklahoma's Governmental Tort Claims Act, 51 O.S. §151, et seq., the principles are applicable here. Because Petitioner alleged that Lane willfully "misappropriated" money and that this was an "intentional constitutional" tort, she claimed Lane acted outside the scope of his employment. Even if Lane were a policy maker (and he is not), Petitioner's own allegations show that he could not have been acting as a policy maker at the time of the purported deprivation because his alleged actions were outside the scope of his employment.

Petitioner failed to allege an unconstitutional policy, practice or custom of the Town of Canton sufficient to state a claim for relief under 42 U.S.C. §1983. Neither was Petitioner able to claim or establish that the actions of Lane are those of a policy maker acting for the city such that a single purported wrongful act might invoke

liability. Under these circumstances, Petitioner's allegations were insufficient to show that Respondent Canton is liable for any unconstitutional deprivation. Accordingly, the Tenth Circuit properly affirmed the District Court's judgment in favor of Respondent Town of Canton. The requested Writ should be denied.

III.

PETITIONER'S CIVIL RIGHTS CLAIM FAILED BECAUSE THE EXISTENCE OF AN ADEQUATE POST-DEPRIVATION TORT REMEDY SHOWS THAT SHE WAS NOT DENIED DUE PROCESS OF LAW.

Because Petitioner has adequate remedies under Oklahoma's Governmental Tort Claims Act for all claimed wrongs, she has suffered no deprivation of due process of law. Absent such a deprivation, her civil rights claim will not lie against either Canton or Lane. Petitioner confessed this argument before the District court. (Pet.App. 20, 30).

In *Hudson v. Palmer*, 486 U.S. 517, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984), this Court considered an inmate's claim that a prison officer's intentional deprivation of property constituted a violation of due process of law. Palmer was an inmate in Virginia who suffered a "shake down" search by correctional officer Hudson. During the search, the officer went into Palmer's prison cell and allegedly intentionally destroyed certain noncontraband personal property belonging to Palmer. *Hudson*, 104 S.Ct. at pp. 3196-97. The trial court sustained the officer's Motion for Summary Judgment, relying on *Parratt v. Taylor*, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981) (Negligent deprivation of property by state officials does not violate the Fourteenth Amendment if an adequate post-deprivation state remedy exists).

The Court of Appeals affirmed the District Court's finding that Palmer was not deprived of his property without due process of law. It did so by recognizing that although the reasoning of *Parratt v. Taylor*, supra, addressed only negligent deprivations of property, it applied with equal force to alleged unauthorized intentional deprivations. *Hudson*, 104 S.Ct. at pg. 3197; citing *Palmer v. Hudson*, 697 F.2d 1220, 1223 (4th Cir. 1983).

Although this Court in *Hudson*, supra, also addressed a Fourth Amendment issue, it examined whether its decision in *Parratt v. Taylor*, supra, should apply to alleged intentional acts. This Court noted that the underlying rationale of *Parratt*, supra, is that:

> When deprivations of property are effected through random and unauthorized conduct of a state employee, pre-deprivation procedures are simply impracticable since the state cannot know when such deprivations will occur. *Hudson*, 104 S.Ct. at pg. 3203.

Writing for the Court, Chief Justice Burger held that there was "no logical distinction between negligent and intentional deprivations of property insofar as the practicability of affording predeprivation process is concerned." *Hudson*, Id., at pg. 3203.

Even though negligent and intentional acts were to be treated equally, Chief Justice Burger noted that they might still constitute a deprivation of due process of law. However, such acts would only be illegal if the state failed to provide a post deprivation remedy.

> We hold that an unauthorized intentional deprivation of property by a state employee does not constitute a violation of the procedural requirements of the Fourteenth Amendment if a meaningful post-

> deprivation remedy for the loss is available. For intentional, as for negligent deprivations of property by state employees, the state's action is not complete until and unless it provides or refuses to provide a suitable post-deprivation remedy. *Hudson*, Id., at pg. 3204.

Next, Chief Justice Burger determined that the Court needed only to decide whether Virginia, where Palmer was incarcerated, provided adequate post-deprivation remedies. Chief Justice Burger found that the Supreme Court had no reason to question the Court of Appeals' implicit determination that Virginia did provide such available remedies.

This Court ruled that no deprivation of property without due process of law occurred. This was because it was impractical for the state to provide pre-deprivation due process when the loss allegedly arose from random, unforeseeable, intentional actions of state employees. Since Palmer had adequate post-deprivation tort remedies there was no loss without due process. He could use state tort theories to remedy any loss.

The allegations in the instant case are logically identical. Oklahoma provides an adequate post-deprivation remedy to Petitioner in this case pursuant its Governmental Tort Claims Act. If Petitioner suffered damages because of an intentional tort by a state employee, she can seek a remedy under the procedure set forth at 51 O.S. §151, et seq.

Because this Court has determined that the availability of adequate state law based tort remedies are sufficient post-deprivation procedures and that intentional torts under such circumstances do not amount to a deprivation of due process of law in violation of the Fourteenth Amendment, Petitioner had no federal claim in this case

against either Respondent. Her claim is identical to that in *Hudson*, supra, and subject to the same infirmities. Therefore, the District Court's judgment was properly affirmed in favor of both Respondents on Petitioner's claim that she had been deprived of property without due process of law.

IV.

THE TENTH CIRCUIT PROPERLY AFFIRMED THE DISTRICT COURT'S DISCRETIONARY DECISION TO REFUSE SUPPLEMENTAL JURISDICTION OVER STATE LAW CLAIMS FOLLOWING ENTRY OF JUDGMENT ON PETITIONER'S FEDERAL CLAIM.

Petitioner's Complaint clearly invoked the original jurisdiction of the District Court due to an allegation concerning a federal question. The District Court also properly had before it Petitioner's pendant state claim under Oklahoma's Governmental Tort Claims Act pursuant to its supplemental jurisdiction.

However, once the District Court entered judgment in Respondents' favor on the federal claim which gave it original jurisdiction, it had authority to dismiss Petitioner's pendant claims. 28 U.S.C. §1367(C) provides:

> The district courts may decline to exercise supplemental jurisdction over a claim in subsection (a) if:
>
> (3) The district court has dismissed all claims over which it has original jurisdiction. . . .

The original jurisdiction of the District Court was invoked because of the existence of a federal question, pursuant to 28 U.S.C. §1331. (Pet.App. 31). Once it entered judgment in Respondents' favor on the federal claim, 28 U.S.C. §1367(C)(3) no longer required it to exercise supplemental jurisdiction over the pendant state tort claim.

The United States Court of Appeals for the Fifth Circuit recently acknowledged that District Courts enjoy a wide discretion in determining whether to retain supplemental jurisdiction over state claims once all federal claims are dismissed. *Noble v. White*, 996 F.2d 797 (5th Cir. 1993). Many District Courts have refused to retain supplemental jurisdiction of state claims after entering judgment in favor of Defendants on civil rights or discrimination claims. See generally *Landefield v. Marion General Hospital, Inc.*, 994 F.2d 1178 (6th Cir. 1993); *Birmingham v. Sony Corp. of America, Inc.*, 820 F.Supp. 834 (D.N.J. 1992); *White v. Union Pacific R.R.*, 805 F.Supp. 833 (D.Kan. 1992); and *Lahaza v. Azeff*, 790 F.Supp. 88 (E.D.Pa. 1992).

In the instant case, there is no compelling reason for the District Court to have retained Petitioner's state law claim. No discovery had been performed. The case had not been before the District Court for such a period of time that it would have fostered judicial economy to resolve the state claim in the federal forum.

Because judgment was entered at an extremely early pleading stage, the District Court was well within its discretion in dismissing Petitioner's state law claims without prejudice. The Tenth Circuit's decision to affirm the District Court's dismissal without prejudice is consistant with positions adopted by other Circuit Courts of Appeal and certainly does not represent a departure from a usual and accepted course of judicial proceedings.

CONCLUSION

For all of the reasons and arguments set forth above, Respondents Town of Canton and Chief Carl Lane respectfully urge the Court to deny Certiorari in this case.

Respectfully submitted,

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Chief Carl Lane.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

No. CIV-93-1056-C

GEORGIA MAE ROBERTS,

Plaintiff,

v.

THE TOWN OF CANTON,
A Municipal Corporation, and CARL LANE,
Chief of Police of the Town of Canton,

Defendant.

COMPLAINT

Comes now the Plaintiff Georgia Mae Roberts of Canton, Oklahoma and for her cause of action against the Defendants, alleges and states as follows:

1. This action is brought against the Town of Canton and the individual officer under 42 U.S.C.A. §1983 and the Oklahoma Governmental Tort Claims Act, 51 O.S. §151 et seq., seeking relief for intentional constitutional torts of said Defendant Chief of Police while acting under color of state law.

2. 28 U.S.C.A. §1331 vests federal district courts with original jurisdiction of all civil actions arising under the constitution, laws, or treaties of the United States.

3. All administrative procedures for the initial review of tort claims against the Town of Canton have been

satisfied, in that an administrative claim was filed with the Office of the Clerk of the Town of Canton on September 25, 1992, within one (1) year after the claim accrued, and ninety (90) days expired without the Town of Canton approving the claim; therefore this Court has jurisdiction and venue over the subject matter herein.

FACTUAL ALLEGATIONS

4. A citation for speeding was issued to Plaintiff on the 10th day of April, 1992. The fine was paid on the 2nd of May, 1992, with court costs of $22.00 to be paid by the 3rd day of June, 1992, and later extended to the 10th day of July, 1992. Plaintiff mailed the $22.00 on June 28, 1992. However, Plaintiff was notified by the municipal clerk that payment had not been received. Plaintiff was ordered to again pay the $22.00, or she would be found in contempt of court and her driver's licensed would be revoked. On July 24, 1992, Plaintiff personally delivered the payment to the Office of the Canton Municipal Court Clerk along with a letter from her attorney protesting the double assessment.

5. Carl Lane, Chief of Police in Canton, picks up the mail while on patrol. A Canton Post Office employee recalls placing the envelope mailed by Plaintiff in the police department's post office box on June 28, 1992. Although the original payment of court costs was tendered as directed, the funds were misappropriated by Defendant Lane while acting under color of state law, and were never credited to Plaintiff, who was forced to pay the sum a second time, thereby depriving Plaintiff of her property without due process of law in violation of the Fourteenth Amendment of the United States Constitution for which Plaintiff seeks $22.00 for court costs assessed in duplicate, $110,000.00 for mental distress,

$500,000.00 for punitive damages, and for such other and further relief as the Court may deem proper in law or in equity.

SECOND CAUSE OF ACTION

The Plaintiff re-alleges and restates each and every allegation hereto set forth, and adopts the same by this reference thereto; and for further cause of action against the Town of Canton, alleges and states as follows:

6. Plaintiff alleges that the Oklahoma Governmental Tort Claims Act waives the sovereign immunity of the Town of Canton and permits suit for damages for actions or omissions by municipal employees, specifically the individual Defendant herein.

7. The Town of Canton, after being put on notice of the conduct of Defendant Lane, used its judicial power in threatening to hold Plaintiff in contempt of court and revoking her driver's license if she did not again pay the court costs. This action was under color of state law and deprived Plaintiff of her property without due process of law, and in violation of the Fourteenth Amendment of the United States Constitution for which Plaintiff seeks $22.00 for court costs assessed in duplicate, $110,000.00 for mental distress and $500,000 for punitive damages, for attorney fees, and for such other and further relief to which she may be entitled.

WHEREFORE, premises considered, Plaintiff prays judgment against each of the Defendants in the amount of $22.00 for duplicate court costs, $110,000.00 for

mental distress, $500,000.00 for punitive damages, attorney fees, and for such other and further relief as the Court may deem just and equitable.

Respectfully submitted,

Jerry Earl Benson, OBA #720
Benson and Annett
120 South Wikoff
P.O. Box 6
Watonga, OK 73772-0006
(405) 623-2577
Attorney for Plaintiff

APPENDIX B

11 O.S. §12-106. Powers vested in board of trustees – Designated powers

All powers of a statutory town board of trustees town, including the determination of matters of policy, shall be vested in the board of trustees. Without limitation of the foregoing, the board may:

1. Appoint and remove, and confirm appointments of, designated town officers and employees as provided by law or ordinance;

2. Enact municipal legislation subject to limitations as may now or hereafter be imposed by the Oklahoma Constitution and law;

3. Raise revenue, establish rates for services and taxes, make appropriations, regulate salaries and wages and all other fiscal affairs of the town, subject to limitations as may now or hereafter be imposed by the Oklahoma Constitution and law;

4. Inspect the books and accounts maintained by the town treasurer;

5. Inquire into the conduct of any office, department or agency of the town, and investigate municipal affairs, or authorize and provide for such inquiries;

6. Create, change and abolish offices, departments or agencies other than those established by law; assign additional functions and duties to offices, departments and agencies established by this article and define the duties, powers and privileges of all officers which are not defined by this article; and

7. Grant pardons for violation of municipal ordinances, including the remission of fines and costs.

Laws 1977, c. 256, §12-106, eff. July 1, 1978.